

Upper Clark Fork River Basin Steering Committee
Meeting Summary
June 28, 2006

Introductions

Gerald Mueller and members of the Upper Clark Fork River Basin Steering Committee (Steering Committee) introduced themselves. Jim Struna was welcomed as a new member from Granite County. Those in attendance included:

Members	Group/Organization Represented
Bob Benson	Clark Fork Coalition
Carol Fox	Natural Resource Damage Program (NRDP)
Jim Struna	Granite County
Jim Dinsmore	Granite Conservation District
Jim Quigley	Little Blackfoot River
Jules Waber	Powell County
Jon Sesso	Butte - Silver Bow
Guests	
Matt Clifford	Clark Fork Coalition
Chris Brick	Clark Fork Coalition
Susan Cottingham	Montana Reserved Water Rights Compact Commission
Jody Miller	United States Forest Service (USFS)
Tim Sullivan	USFS
Staff	
Mike McLane	DNRC
Gerald Mueller	Facilitator

Agenda

- Review of the May 15, 2006 Meeting Summary
- Updates
 - Montana Watershed Stewardship Award
 - EQC Presentation
 - Flint Creek Watershed Committee
 - Deer Lodge Valley Vision Process
 - Clark Fork Watershed Roundtable
- State-USFS Reserved Water Rights Compact and Upper Clark Fork River Basin Closure
- Clark Fork River Reconnection Project
- Clark Fork River Flow Story
- Steering Committee 06-07 Funding
- Public Comment
- Next Meeting

May 15, 2006 Meeting Summary

The Steering Committee made no changes to the meeting summary.

Updates

Montana Watershed Stewardship Award - Gerald Mueller reported that the Steering Committee did receive the 2006 Watershed Stewardship Award from the Watershed Coordinating Council. The Steering Committee was presented with a large framed certificate, and each individual member received smaller version of the same certificate. Mr. Mueller stated that he will mail the individual certificates.

EQC Presentation - Gerald Mueller stated that he presented the post-adjudication paper "How Will Completion of the Adjudication Affect Water Management in Montana?" to the Environmental Quality Council on May 19, 2006. The presentation included a summary of the survey of water right holders in the Flint Creek and Blackfoot sub-basins as well as the comments from the group of Gallatin and Musselshell water users on the post-adjudication paper. In the questions that followed the paper, Senator Story asked DNRC Director Mary Sexton if the issues and alternatives discussed in the paper could be considered in as a part of the State Water Plan process. Ms. Sexton responded that it might be possible to do so. The Steering Committee directed Mr. Mueller to write a letter to Ms. Sexton volunteering its assistance should the DNRC decide to use the water plan process as suggested by Senator Story.

Flint Creek Watershed Committee - Jim Dinsmore reported that the Granite Conservation District hosted the third meeting the Flint Creek watershed committee. About 30 people attended. The group agreed to a name, the Granite Headwaters Watershed Committee and defined its boundaries to include upper Rock Creek, the Flint Creek Valley and Georgetown Lake. It also formed a committee to work on a vision statement and ground rules. The next meeting was scheduled for August 7, 2006.

Deer Lodge Valley Vision Process - Bob Benson and Gerald Mueller reported on the meeting they attended on June 14. Mr. Benson explained that this meeting, which was convened by the Clark Fork Coalition, the WRC, and the Clark Fork River Technical Assistance Committee, was held to consider goal statements, objectives, and specific actions associated with five themes for a Deer Lodge Valley community plan. A preliminary list of goals, and objectives were developed by Ron Hanson, Powell County Planner, from the results of a previous meeting held on March 22 and 23. The meeting attendees were broken into five groups to consider one of five themes, cleanup and restoration, education, land use planning, water usage, and economic development. Each group reviewed its goal statement and preliminary list of objectives, and identified entities that might act to achieve the revised goal and objective statements. Gerald Mueller reported on the three goal statements and a list of objectives for the water use theme. See Appendix 2. He stated that only two local water users in the water user group, and that this was not likely enough input from valley water users and interests to develop goals and objectives related to water use for a community plan. He asked if the Steering Committee would be willing to assist this effort regarding the water use theme. The Steering Committee directed him prior to its next meeting in the fall to discuss with the Clark Fork Coalition how it might provide such assistance.

Clark Fork Watershed Roundtable - Mike McLane reported that Mary Sexton has asked him to convene a round table of existing conservation districts and watershed groups in the Clark Fork River basin. The round table would allow the groups to explore jointly their watershed related

activities, funding needs, and how the groups might work together or avoid duplicating each other's efforts. The round table would help the DNRC decide how to support these groups. The round table may meet in late November.

State-USFS Reserved Water Rights Compact

Susan Cottingham, the Program Manager for the Reserved Water Rights Compact Commission (Compact Commission), Jody Miller, an attorney in the Office of General Council of the USFS Region 1, and Tim Sullivan, a USFS fisheries biologist, discussed the status of the ongoing negotiations between the Compact Commission and the USFS. Both the state and the USFS had expected to have a draft compact ready by this meeting; however, because of a new issue discussed below, the draft was not ready. Ms. Cottingham summarized the content of the substance of the compact about which the state and the USFS have agreed using a handout which is included below in Appendix 1.

The new issue has arisen because the compact would modify existing state water law in four ways. It would:

- Modify the state water reservation process;
- Require applicants for water right permits to have a special use permit from the USFS, if one would be applicable, before an application would be considered correct and complete;
- Confirm that the USFS would have standing to object in the state-wide water adjudication process; and
- Allow the USFS to make a permanent change of a diversionary use to an instream use.

Because the Montana Legislature cannot bind future legislatures, the possibility exists that a future legislature might change or rescind one of these modifications. The question, if such a change is made, what happens to the compact? Would the USFS have the option of terminating it? The USFS wants to bind the state permanently to the principles in the compact. A negotiating session is scheduled on July 11 and 12 in Missoula to consider this issue.

Both the Compact Commission and the USFS are willing to present the negotiated compact, assuming an agreement is reached, to the Steering Committee at its fall meeting.

Clark Fork River Reconnection Project

Gerald Mueller stated that through Mike McLane he had recently learned of a funding opportunity that might allow the Steering Committee to pursue the project discussed at its October and November 2005 meetings. The Montana Association of Conservation Districts recently announced that \$85,000 is available through its Local Empowerment Program. This money, however, must be spent by December 31, 2006, and a final report must be written by January 31, 2007. The grant application deadline is July 28, 2006 and grant awards would occur by the end of August. A conservation district must be the applicant.

The goal of the reconnection project previously discussed would be to reconnect the Clark Fork River to its former channel and flood plain that has been cut off by construction of roads and railroads. In the initial phase of the project, areas cut off would be identified and screened to determine which areas, if any, might be advanced to an engineering design and ultimate reconnection. The identification and screening would include:

- Use aerial photo graphs of the river corridor to identify which railroad lines and/or county,

state, or federal roads have cut off river meanders;

- Using aerial photo graphs to estimate the length of river each reconnection would add;
- Determining land ownership for the cutoff meanders;
- Determining the type and number of reconnection actions required, i.e. breaching embankments, installing culverts, or building bridges; and
- Surveying the river and the area cut off to determine the feasibility of reconnection; and
- Sampling for metals to determine if the cutoff area is too contaminated to reconnect it to the river.

Given the short time allowed to spend the funds and carry out the project, Mr. Mueller suggested that an LEP application be limited to the first four bullets plus trying to identify existing data sources on metals contamination. Actual field work and the surveying and metals sampling would wait for additional funding.

The Steering Committee authorized Mr. Mueller to prepare an LEP grant application, if Granite Conservation District would agree to submit it.

Clark Fork River Flow Story

The Steering Committee reviewed and discussed the latest draft of the story that Mr. Mueller had circulated to them prior to the meeting. This draft is attached below as Appendix 2. The Steering Committee agreed to the following changes in the draft:

- On page 1, the last sentence of the first paragraph under the heading “Introduction” should read: “EPA anticipates design beginning in 2006, followed by ten years of remediation work.”
- On page 1, the first sentence of the second paragraph in the introduction should be changed to “Metals contamination has been a major limiting factor for the fishery in the upper Clark Fork...” A member argued that nutrients are now a major limiting factor in addition to metals.
- On page 7, under the heading “Existing Water Use, Water Rights, and Infrastructure”, in the first sentence of the second paragraph, pumps should be added as a method by which agriculture uses the water of the Clark Fork mainstem. Also information should be added about the pumping water rights.
- On page 10, the paragraph beginning “Butte Silver Bow - The ...” should be changed to read: “Butte Silver Bow - The consolidated City and County of Butte-Silver Bow has two water right change applications pending before DNRC. Both change applications deal with stored water from Silver Lake and Storm Lake and direct flow water from Warm Springs Creek. One, application 30013720, seeks to change the use of some of the water diverted at Meyer’s Dam from industrial to instream flow to benefit the fishery in Silver Bow Creek from its confluence with Blacktail Creek to the Warm Springs Pond. The amount of water in the change is 2,083 gallons per minute (gpm) up to 3,360 acre feet per year (acf/yr) or 4.6 cfs. The second, application 30013721, again seeks to change an industrial use to instream flow, this time to benefit the fishery in Warm Springs Creek and the mainstem of the Clark Fork River from its confluence with Warm Springs Creek to Gold Creek. This application, which primarily involves stored water from Silver Lake, seeks to change 15,580 acf/yr to instream use. Under an agreement between Butte-Silver Bow and ARCO, ARCO can call for the releases from Silver Lake. From 1998 to 2001, ARCO tested using water stored in Silver Lake to enhance instream flows during the irrigation season in Warm Springs Creek and into the Clark Fork River. ARCO determined that the test was successful. Since 2002, ARCO and

Montana Trout Unlimited have had an agreement authorizing TU to monitor flows and call for release of water from Silver Lake to maintain a target flow of 40 cfs in Warm Springs Creek. In part because of this agreement, flows in Warm Springs Creek have been continuous to the mouth every irrigation season, and, with occasional exceptions, have stayed above 20 cfs.”

- On page 10, the paragraph beginning, “One recent development that has unexpectedly...” should be deleted.

In addition, Steering Committee members offered non-substantive editing changes.

As next steps, Mr. Mueller will redraft the paper making the changes just discussed. He will then recirculate the paper to the Steering Committee members for their review and comment. DNRC staff has agreed to draft the map referred to as Figure 1 and layout the document for printing including adding pictures of the river. Layout will occur in late July. The document will then be printed and distributed.

Steering Committee 06-07 Funding

Mike McLane reported that he has obtained \$5,000 to support the Steering Committee for the next fiscal year from funds appropriated to conservation districts by the last legislature. He has completed a contract with the Granite Conservation District for this money. The deliverables for these funds include:

- Monitoring water supply and drought conditions in the basin;
- Conducting outreach and education on water allocation processes under future enforceable decrees developed by the State’s Statewide Stream Adjudication (Part of this dialog is to examine water user needs and the opportunities, constraints, and unknowns that exist under current water commissioner statutes.);
- Re-examining with the affected watershed community and as directed by statute the Upper Clark Fork Basin Closure. (This evaluation will consider a) recent Supreme Court decision on connected ground water in closed basins, b) proposed settlement of the USFS Reserved waters that might modify the existing basin closure, and c) proposed rule and statutory changes to water allocation process for ground water wells and individual wells used on subdivisions.); and
- Continuing exploration of the allocation and management of “connected ground water” in the Upper Clark Fork. (This dialog should consider the recent DNRC vs. TU decision that defined such waters in the Smith River.); and
- Beginning a watershed dialog on functioning and impacted flood plains in the Upper Clark Fork River Basin.

The budget for these funds is as follows:

Administration	\$500.00
Operations (Meeting rooms, copies, mailing, printing, phones, mileage, & similar.)	\$1,000.00
Facilitation / Coordination	\$3,000.00
Reporting (development, edit, and distribution)	\$500.00
Total	\$5,000.00

Public Comment

There was no public comment.

Next Meeting

The next meeting will be scheduled for September.

Appendix 1

FOREST SERVICE COMPACT

- Recognizes federal reserved water rights
- Creates 21 state water rights in Compact
- Provides process for acquiring state water rights
- Changes to state law for sequencing and standing
- New state law for permanent change of diversionary use to instream flow

Reserved Water Rights

- Discrete Administrative Uses
 - Current
 - Future
- Dispersed Administrative Uses
- Emergency Fire Suppression
- South Fork of the Flathead Wild & Scenic River

State Water Rights Created

- 20 Basins instream flow based on Wetted Perimeter Methodology
- 1 in situ non-consumptive (Fen) based on volume
- Water Right created in Compact (akin to Murphy Rights)

Process for Acquiring State Water Rights

- Modifications to state water reservation statute, 85-2-316
- Authorizes Forest Service to proceed under 85-2-316 in all basins (basin closure)
- Authorizes Forest Service to apply for any authorized federal purpose
- Sets time frames

State Water Reservations

- New Compact provisions for specific procedures in limited circumstances
 - Where purpose is fish
 - Where amount requested is based on the Wetted Perimeter Methodology
 - Lower inflection point
 - Upper inflection point for an existing population of certain fish species
 -

State Water Reservation (Cont.)

- New Compact provisions for specific procedures in limited circumstances (Cont.)
- DNRC has no discretion unless there is objector
- Object has the burden to show various criteria

Sequencing

- Permit applicant must have special use permit in order to have correct and complete application
- All appropriations must have special use permit in order to get certificate of water right
- New permits are subject to terms and conditions of special use permit

Standing

- Changes to 85-2-233 will confirm that Forest Service has standing to object in the state-wide water adjudication.
- Language was taken from previous Water Court Rules

New state law for permanent change of diversionary use to instream flow

- Ability to change diversionary (consumptive) use to instream flow on permanent basis
- Requires new provision of state law
- Must go through change process with notice and opportunity to object

- Remaining Issues
- Remaining Work
- Schedule for Public Involvement
- Legislation